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No. 84-142

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ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

UNITED STATES CURRENCY AMOUNTING TO THE SUM OF TWO
HUNDRED FIFTY THOUSAND DOLLARS [\$250,000.00] MORE
OR LESS,

Defendant,

and

THE STATE OF NEW YORK,

Defendant-Appellee,

and

REPUBLIC OF COLOMBIA,

Defendant-Appellee-Petitioner,

and

JOSE A. FONSECA,

Defendant-Appellant-Respondent.

**MEMORANDUM OF RESPONDENT SUGGESTING
THAT THE CAUSE IS MOOT**

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Jose A. Fonseca

September 11, 1984

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REPUBLIC OF COLOMBIA,

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and

JOSE A. FONSECA,

Defendant-Appellant-Respondent.

MEMORANDUM OF RESPONDENT SUGGESTING
THAT THE CAUSE IS MOOT

Respondent in the above-entitled case files this memorandum to advise the Court of certain facts which, in respondent's view, render the cause *moot*.

The funds previously in question were delivered to respondent's attorneys and disbursed pursuant to a written Stipulation of Settlement and Dismissal and Release between respondent and the United States of America, dated September 7, 1984, settling the mandamus action previously commenced by respondent (Fonseca v. Regan, etc., et al., No. 78 Civ. 1907, EDNY). A conformed copy of the Stipulation was previously

filed with Mr. Justice Marshall in opposition to petitioner's untimely September 7, 1984 stay application, which was denied.

The immediate transfer of funds, agreed to by the United States and expressly directed by the District Court pursuant to the mandate of the Court of Appeals, was completed on September 7, 1984.

Petitioner has previously *conceded* (at paragraph "6" of its unsuccessful September 7, 1984 stay application) that "if the money is turned over to Fonseca's counsel, *the subject of the certiorari petition will have disappeared, and the rights of Colombia [will have been] defeated. . . .*" (Emphasis added.)

In light of the foregoing, it is undisputed that the certiorari petition, at best, presents abstract questions of law. There is no longer any *res* to be interpled, and the judgment of this Court, even if in Colombia's favor, could not grant petitioner effective relief with respect to a fund of money, previously in question, but which no longer exists.

Put most simply, changed circumstances have terminated the litigation and rendered it academic, eliminating any case or controversy. Accordingly, the jurisdiction of this Court to entertain Colombia's petition has ceased and the petition should be denied. Stern & Gressman, *Supreme Court Practice*, at ¶18.1, p. 884 *et seq.* (5th Ed. 1978).

Respectfully submitted,

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September 11, 1984

